

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KRISTOFFER C. TIBBS,

Defendant.

4:13-CR-3028

MEMORANDUM AND ORDER

This matter is before the Court on the defendant's objection (filing 57) to the Magistrate Judge's Order of March 31, 2014 (filing 55). Tibbs pleaded guilty to one count of receipt and distribution of child pornography, in violation of 18 U.S.C. § 2252A(a)(2). Filings 1 and 29. Tibbs was sentenced by this Court on March 14, 2014, to 66 months' imprisonment. The Court permitted Tibbs to self-surrender, and ordered him to report for service of his sentence on May 21, 2014. Filing 51 at 2.

On March 15, 2014, Tibbs was sentenced to 300 days in county jail on a pending state drug charge. Tibbs was ordered to begin serving that sentence immediately. Filing 57 at ¶¶ 2–3. On March 31, the Pretrial Services Officer filed a Petition for Action on Conditions of Pretrial Release. Filing 55. The Petition alleged that due to his incarceration on state charges, Tibbs was in violation of the terms of his pretrial release, which contained a term requiring home confinement. See filing 13 at 1–2. The Petition requested that a warrant be issued for Tibbs' arrest, and that he be remanded to the United States Marshal and the custody of the Bureau of Prisons to commence service of his federal sentence upon being released by the state. Filing 55. The Magistrate Judge approved the Petition, and a warrant was issued. Filings 55 and 56.

Tibbs objects to the Magistrate Judge's order and the issuance of the warrant, arguing that it will interfere with his ability to obtain work release while serving his state sentence, and requesting that his voluntary surrender status be reinstated, so that he may surrender to the Bureau of Prisons when his state sentence is completed, which is scheduled to occur in August 2014. Thus, he asks that the warrant and associated detainer be rescinded and that the self-surrender date be extended until September 15, 2014. Filing 57.

The Court finds that Tibbs is not entitled to the relief he requests. Tibbs' motion is governed by 18 U.S.C. § 3142–45. Because Tibbs has pleaded guilty to receipt and distribution of child pornography, he has committed a "crime of

violence" as defined in § 3156(a)(4)(C). Under § 3143(a)(2), a defendant who has pleaded guilty to such a crime *must* be detained pending imposition of sentence, unless the Court finds either that there is a substantial likelihood that a motion for acquittal or new trial will be granted; or an attorney for the government has recommended that no sentence of imprisonment be imposed, and the Court finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to any other person or the community. Neither option is available to Tibbs: there are no motions for acquittal or new trial pending and he has been sentenced to a term of imprisonment.

Notwithstanding § 3143, a Court may order the release of a defendant such as Tibbs, pending imposition of his sentence, if the Court finds both (1) clear and convincing evidence that the defendant is not likely to flee or pose a danger to any other person or the community and (2) if it is clearly shown that there are "exceptional reasons" why the defendant's detention would not be appropriate. 18 U.S.C. § 3145(c). See, e.g., *United States v. Meister*, 744 F.3d 1236 (11th Cir. 2013); *United States v. Mostrom*, 11 F.3d 93 (8th Cir. 1993) (*per curiam*).

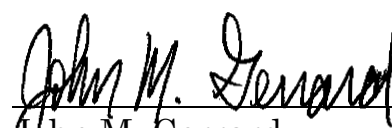
Although such circumstances existed at the time of Tibbs' sentencing, the Court finds they are no longer present. Tibbs is now serving a state sentence for attempted delivery of methamphetamine. Filing 53 at ¶ 42. The Court may have previously been willing to allow Tibbs to self-surrender. But the Court is not willing to further extend the date for Tibbs to begin serving his federal sentence, and finds that Tibbs has failed to show exceptional reasons why detention would be inappropriate.

THEREFORE, IT IS ORDERED:

1. Tibbs' objection (filing 57) is overruled, and his accompanying requests for relief are denied.

Dated this 9th day of May, 2014.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Gerrard", is written over a horizontal line.

John M. Gerrard
United States District Judge